

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Heather A. Nunn,

Plaintiff,

v.

Civil No. 09-1286 (JNE/JJK)
ORDER

Noodles & Company, a Delaware
Corporation and Zurich American
Insurance Company, a New York
Corporation,

Defendants.

On November 23, 2010, the Court granted summary judgment for Defendants Noodles & Company and Zurich American Insurance Company, dismissing Plaintiff Heather A. Nunn's claims against them. Final judgment has not been entered yet because of the outstanding crossclaims between Defendants. On December 20, 2010, Nunn filed a notice of appeal, and she seeks leave to proceed in forma pauperis on appeal.

To qualify for in forma pauperis status on appeal, a litigant who appeals from a judgment in a civil action must submit information that demonstrates the litigant's inability to pay, or give security for, the appellate filing fees. 28 U.S.C. § 1915(a)(1) (2006). Even if the litigant is financially eligible to proceed in forma pauperis on appeal, the litigant may not appeal in forma pauperis if the district court "certifies in writing that [the appeal] is not taken in good faith." *Id.* § 1915(a)(3). Good faith in this context is judged by an objective standard rather than the subjective beliefs of the appellant. *See Coppedge v. United States*, 369 U.S. 438, 445 (1962). To determine whether an appeal is taken in good faith, the Court must decide whether the claims to be decided on appeal are factually or legally frivolous. *Id.* An appeal is frivolous, and therefore

cannot be taken in good faith, “where it lacks an arguable basis either in law or in fact.” *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Here, Nunn’s notice of appeal is premature because the Court has not entered final judgment. Her appeal will likely be dismissed for want of jurisdiction. *See Thomas v. Basham*, 931 F.2d 521, 523 (8th Cir. 1991). Consequently, the Court concludes that her appeal is frivolous at this time.

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. The Court certifies that Nunn’s appeal is not taken in good faith.
2. Nunn’s motion for leave to proceed in forma pauperis on appeal [Docket No. 176] is DENIED.

Dated: January 10, 2011

s/ Joan N. Ericksen
JOAN N. ERICKSEN
United States District Judge